HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.13751 of 2006

Date: October 24th , 2007

Between:
M/s. Kamini Industrial Corporation,
Plot No.48, T.I.E., Balanagar,
Hyderabad – 500 037, represented
By its proprietor Smt. Usha Bhagat. … Petitioner.

And

1. The Andhra Pradesh Industrial
   Infrastructure Corporation Ltd.,
   Zonal Office, Jeedimetla, I.E.,
   Sanathnagar, Hyderabad – 18,
   Rep. by its Zonal Manager and 2 others. … Respondents.

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ORDER:

Heard Sri C.Raghu, learned counsel representing writ petitioner, Sri E. Madan Mohan Rao, learned counsel representing R-1 and Sri D.Madhava Rao, learned counsel representing R-3.

2. This court ordered notice before admission on 07.7.2006 and issued *Rule Nisi* on 13.7.2007 and made an interim order in W.P.M.P.No.17114 of 2006 directing the first respondent to take appropriate action pursuant to the show cause notice issued by it vide Lr.No.IDAB/OR/57/77, dated 07.01.2006 against the third respondent.

3. The third respondent filed W.V.M.P.No.2430 of 2007 to vacate the interim order and at request of the counsel on record, the writ petition itself is taken up for final hearing and the same is

being disposed of finally.

4. The counsel representing respective parties had taken this Court through the respective stands taken by the parties in the affidavit filed in support of the writ petition and the counter-affidavit filed by R-3 in respect of the vacate application.

5. The writ petition is filed for a writ of *Mandamus*, or any other appropriate writ, order or direction, declaring the inaction of the first respondent corporation in not taking any action against the third respondent inspite of issuing a notice dated 07.01.2006 pursuant to petitioner's complaint dated 15.12.2005, as illegal and arbitrary and further direct respondents 1 and 2 to remove the debris/blockages placed/erected on 20 feet wide road on the south side of the petitioner by the third respondent and pass such other suitable orders.

6. It is stated by the petitioner that he is running a small-scale unit in the name of M/s. Kamini Industrial Corporation, in Plot No.48, T.I.E., Balanagar, Hyderabad and his site is abutted by a 40 feet wide road on the western side and 20 feet wide road on the southern side. It is also stated that the petitioner had got two gates, one opening to 40 feet road and the other towards 20 feet road. Whereas, third respondent, who is neighbour of the petitioner on the side of 20 feet road, had completely blocked the entire road and preventing the petitioner from entering into his premises through the 20 feet road. It is also stated that the said 20 feet road was a public road as per the layout of the IDA, Balanagar, and the said road was for the purpose of having access to the petitioner's unit. The entire road had been blocked by the third respondent by placing heavy steel old material and also blocked the entry into this road for the public use to go to

Hanuman temple and also to petitioner's unit. In fact, the 20 feet road was shown as a public road as per the layout as stated above and blocking the road by the third respondent would amount to infringing the rights of the petitioner and others as well to use the road. It is also further stated that aggrieved by the illegal action of the third respondent, the petitioner made a representation dated 15.12.2005 to the first respondent and also representation on 29.12.2005 to the second respondent. The first respondent pursuant to petitioner's representation dated 15.12.2005 had issued a notice dated 07.01.2006 calling upon the third respondent to appear before the first respondent on 18.01.2006 and to explain as to why necessary action should not be taken against him and remove all the obstructions caused by him on the 20 feet road. In the said notice it was specifically stated by the first respondent that the said 20 feet road had been obstructed by the third respondent which was causing hindrance to the general public while going to the Hanuman temple and also to the neighbouring industrial unit. It is also stated that though first respondent had issued notice dated 07.01.2006 calling the third respondent to appear before him on 18.01.2006, till now the first respondent had not taken any action and the third respondent had not removed any material which he had dumped on the 20 feet wide road which was causing inconvenience to the petitioner and also to the devotees who visited the said temple.

7. The main grievance of the petitioner is that despite repeated requests, no appropriate action is being taken and further the same is not being carrying to its original end. Hence, the writ petition had been thought of.

8. In the counter-affidavit filed it is stated by third respondent

that the third respondent had been running an industrial unit under the name and style of M/s. Deep Auto & Allied Industries in Plot No.48 of TIE, Balanagar, from 1972. The property was obtained under an agreement of sale initially and later got the property registered under a sale deed executed by the first respondent corporation on 03.2.1986 vide registered document No.469 of 1986. Further it is averred that the property was registered in his personal name viz., Tejinder Singh. Under the covenant of the sale deed, the third respondent had been running the business under the name and style of M/s. Deep Auto & Allied Industries in plot No.49 of the Industrial Development Area so allotted by the first respondent for setting up an industry for manufacture of spares for material handling equipments etc. As per the schedule of property sold in favour of the third respondent, the land to an extent of 3725 square yards in Plot No.49 of Industrial Development Area Balanagar, bounded on North by Plot No.48; East by Plot No.50; South by Technocrat Industrial Estate and West by Market and there was no road included in the property and there was a temple, the land of which had been excluded. It is further stated that from the plan that had been annexed to the sale deed it could be noticed that temple area had been excluded, but no area had been excluded as per the plan. Neither of the boundaries of the property would show any road as is being alleged by the petitioner. It is also stated that when there was interference sought to be made by the first respondent, third respondent filed a suit O.S.No.201 of 2001 on the file of Principal Junior Civil Judge, West and South R.R. District against the first respondent for injunction and obtained *ex parte* decree not to interfere with his peaceful possession and enjoyment. Later I.A.No.2562 of 2002 was filed to set aside the *ex parte* decree and the same was dismissed. Therefore, the third respondent had got an exclusive right to the property and he had been in physical possession and

enjoyment of the same from 1973 onwards and this was not a road as alleged. It is also stated that respondent No.3 had been repeatedly making applications to allot excess land, which the writ petitioner claiming to be the road, and the APIIC communicated to the third respondent that the request for allotment could be considered on payment of consideration. The writ petitioner had no *locus standi* to continue with the present writ or seek present relief any more as on 31.7.2006, 31.7.2006, 30.11.2006, and 30.11.2006 the writ petitioner sold away the property dividing into plots much against the allotment condition and in violation of the terms of sale deed executed by the APIIC for which APIIC is not taking action. The writ petitioner cannot divide or sub-divide plot. It is also stated that even according to writ petitioner the representation was received by the corporation as against which a show cause notice was issued and a detailed reply was also given and the corporation had passed no final orders. It is also specifically stated that third respondent was aggrieved by the action of the first respondent in trying to forcibly adjudicate the matter without following due process of law. It is also stated that there is a judgment and decree of civil court whereunder there was an injunction against the corporation and they cannot interfere with third respondent's peaceful possession and enjoyment of the property without following due process of law. It is further stated that basing on the interim order passed on 13.7.2007 in W.P.M.P. the first respondent is taking high handed and illegal action, coming with police and trying to interfere with their peaceful possession and enjoyment of the property. Therefore, the order passed by this Court is required to be vacated.

9. In the light of the facts and circumstances, the respective stands taken by the parties and also the material papers placed before this court in the light of the specific stand taken in the

counter-affidavit that there is a judgment and decree of civil court, let the first respondent look into the grievance of the petitioner and also third respondent as well and taking into consideration all the aspects pleaded by the respective parties before this Court and take a decision in accordance with law.

10. The main grievance ventilated by the third respondent who filed vacate application W.V.M.P.No.2430 of 2007 before this Court is that though the first respondent had not passed any order in this regard, under the guise of the interim orders made by this Court, the third respondent is being harassed. It is made clear that till appropriate decision is taken in the light of the notice, which had been already issued, the parties to maintain *status quo*. Let the first respondent take appropriate decision in this regard taking into consideration the facts and circumstances within a period of eight weeks from the date of receipt of a copy of this order.

11. The writ petition is accordingly disposed of. No order as to costs.

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(P.S.NARAYANA, J)

Date: October 24th, 2007.

BSB